

## The IRS Processes Most Amended Returns Timely But Some Linger for Months, Generating Over a Million Calls That the IRS Cannot Answer and Thousands of TAS Cases Each Year

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### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Finality*
- *The Right to a Fair and Just Tax System*

### EXPLANATION OF THE PROBLEM

The IRS leads taxpayers to expect that it will process their amended returns within 16 weeks. While this is true for most amended returns, a subset takes longer to process or hits snags that the IRS does not explain very well. The IRS does not disclose to taxpayers that if their amended returns are selected for audit, processing will likely take several more months and sometimes the IRS will simply stop processing them. In these situations, the Where's My Amended Return tool, which is not available to business taxpayers, is of little help because it has only three statuses (received, adjusted, or completed) and does not explain where an amended return is in the processing pipeline or estimate when processing will be complete.

In fiscal year (FY) 2019, the IRS's failure to set clear expectations and keep taxpayers informed of the status of their amended returns generated over 2.2 million calls, 1.4 million of which it was able to answer, and resulted in over 9,400 TAS cases.<sup>2</sup> Many taxpayers file an amended return to request a refund of a tax overpayment, but the IRS also has the statutory authority to consider a taxpayer's request to reduce an assessed tax that remains unpaid, *i.e.*, a request for abatement.<sup>3</sup> The IRS has exercised that authority and established procedures for processing amended returns requesting an abatement.<sup>4</sup> However, it sometimes refuses to consider the claim and issues a form letter without an adequate explanation to the taxpayer. The form letter

1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

2 IRS, Joint Operations Center (JOC), Snapshot Reports: Enterprise Snapshot, FY 2019; Taxpayer Advocate Management Information System (TAMIS), case receipts with Primary Core Issue Code (PCIC) 330 (amended return processing), FY 2019.

3 IRC § 6404(a) authorizes the IRS, among other things, to abate the unpaid portion of the assessment of any tax which "is excessive in amount," meaning "in excess of the correct tax liability." Treas. Reg. § 301.6404-1(a).

4 Internal Revenue Manual (IRM) 25.6.1.10.1(2), (3), Requests for Abatement (Sept. 20, 2016). See also IRM 1.2.1.4.15, Policy Statement 3-15 (Formerly P-2-89), Reconsideration of an Unpaid Assessment (Sept. 20, 1999) (relating to requests for abatement in the context of audit reconsiderations).

simply states the law does not allow a claim to reduce tax owed and instructs the taxpayer to pay the tax followed by another amended return.

## ANALYSIS

An amended return is not defined in the IRC, and taxpayers are not required to file an amended return.<sup>5</sup> The Supreme Court has held an amended return is a creature of administrative origin and grace.<sup>6</sup> In practice, taxpayers regularly file amended returns to correct an error on a previously filed return, and the IRS has adopted specific procedures for handling amended returns.<sup>7</sup> Most individual taxpayers receive a refund after they file an amended return. The IRS's announced timeframe for processing individuals' amended returns is 16 weeks.<sup>8</sup> The IRS advises that it often takes three to four months to process corporations' amended returns.<sup>9</sup>

Taxpayers who file amended income tax returns include:

- Individuals filing Form 1040X, Amended U.S. Individual Income Tax Return;<sup>10</sup>
- Corporations filing Form 1120X, Amended U.S. Corporation Income Tax Return, or other Form 1120-series amended returns such as Form 1120-S, U.S. Income Tax Return for an S Corporation, and checking a box on the form to indicate that the return is an amended return;
- Partnerships filing Form 1065X, Amended Return or Administrative Adjustment Request (AAR), or Form 1065, U.S. Return of Partnership Income, and checking a box on the form to indicate that the return is an amended return; and
- Estates and trusts filing Form 1041, U.S. Income Tax Return for Estates and Trusts, and checking a box on the form to indicate that the return is an amended return.

In distinguishing between a request for abatement (*i.e.*, a request for a “decrease in the tax that was assessed”) and a request for refund (*i.e.*, “a request for the return of a paid assessment”), the IRS notes that “[a]lthough IRC Section 6404(b) provides that taxpayers have no right to file a claim for abatement of income, estate, or gift tax, the Service will consider a taxpayer’s request for an abatement of such taxes where the taxpayer files an amended return with the IRS that shows a decrease in the tax that was assessed.”<sup>11</sup>

Various codes on IRS computer systems show the receipt of an amended return and its movement through different IRS functions as it is processed.<sup>12</sup> The codes do not show the correction the taxpayer *sought* on the

5 There is no statutory provision that authorizes the filing of amended returns or requires the IRS to accept them, although the IRS has discretion to accept them. See *Hillsboro National Bank v. Comm’r*, 460 U.S. 370, 378, n. 10 (1983).

6 *Badaracco v. Comm’r*, 464 U.S. 386, 393 (1984) citing *Hillsboro National Bank v. Comm’r*, 460 U.S. 370 (1983).

7 The IRS’s procedures for accepting and processing amended returns are described in various places throughout the IRM. See, e.g., IRM 21.5.2, Account Resolution, Adjustments Guidelines (Oct. 1, 2020); IRM 21.6.7, Individual Tax Returns, Adjusting Individual Tax Accounts (Oct. 1, 2020); and IRM 3.11.217, Returns and Documents Analysis, Form 1120-S Corporation Income Tax Returns (Jan. 1, 2020).

8 See IRS, Form 1040X, Amended U.S. Individual Income Tax Return, Frequently Asked Questions, <https://www.irs.gov/filing/amended-return-frequently-asked-questions> (last visited Dec. 11, 2020) (noting that processing time is 16 weeks whether the amended return is filed electronically or not).

9 IRS Form 1120X, Amended U.S. Corporation Income Tax Return at 3 (Nov. 2016).

10 IRS Compliance Data Warehouse (CDW), Individual Master File (IMF) Transaction History File, Business Master File (BMF) Transaction History File (Oct. 1, 2020).

11 IRM 25.6.1.10.1(2), (3), Requests for Abatement (Sept. 20, 2016). Taxpayers may claim an abatement of tax other than income, estate, or gift tax by filing IRS Form 843, Claim For Refund and Request for Abatement. See Treas. Reg. § 301.6404-1(c).

12 A description of the methodology used to obtain counts and processing times is found in Appendix A, following this Most Serious Problem.

amended return, but they do show what adjustment *was made* to a taxpayer's account after an amended return was filed. The outcomes can be grouped into the following four categories:

- Category 1: The IRS agreed the taxpayer made an overpayment of tax and issued a refund to the taxpayer (or offset the overpayment to the taxpayer's tax liability for a different year);
- Category 2: The IRS abated some or all the tax, *i.e.*, the IRS adjusted its records to show the taxpayer owed less tax than the amount shown on the original return;
- Category 3: The IRS adjusted its records to show the taxpayer owed more tax than the amount shown on the original return; or
- Category 4: The IRS did not make any change to its records to reflect information shown on the amended return. This category includes cases in which the IRS rejected or declined to consider the change proposed on the amended return, and where the IRS disallowed refunds requested on an amended return.

Figure 1.9.1 shows an estimate of the number of amended returns the IRS processed in FYs 2017-2019 by the type of filer and the ensuing adjustment to the taxpayer's account, according to the categories described above.

**FIGURE 1.9.1, Estimated Number of Amended Returns Processed, FYs 2017-2019, by Type of Form and Category of Outcome<sup>13</sup>**

Fiscal Year	Form	Category 1 Refund	Category 2 Decrease in Tax	Category 3 Increase in Tax	Category 4 No Change	Total
FY 2017	Form 1040X	1,739,302	91,591	694,823	590,039	3,115,755
	Form 1120X	18,352	1,637	3,836	161,470	185,295
	Form 1065X	905	0	0	81,130	82,035
	Form 1041	12,016	1,091	4,869	26,230	44,206
FY 2018	Form 1040X	1,889,628	98,922	712,322	678,877	3,379,749
	Form 1120X	17,256	1,550	3,564	162,482	184,852
	Form 1065X	566	0	0	82,889	83,455
	Form 1041	11,281	1,056	4,368	28,210	44,915
FY 2019	Form 1040X	1,570,199	98,010	652,698	633,701	2,954,608
	Form 1120X	15,291	1,426	3,464	170,366	190,547
	Form 1065X	427	0	0	92,171	92,598
	Form 1041	10,887	1,028	4,297	42,119	58,331

<sup>13</sup> CDW IMF and BMF Transaction History Tables, cycle post 202039. To protect taxpayer confidentiality, the number of cases is shown as zero whenever the actual number of cases was less than ten.

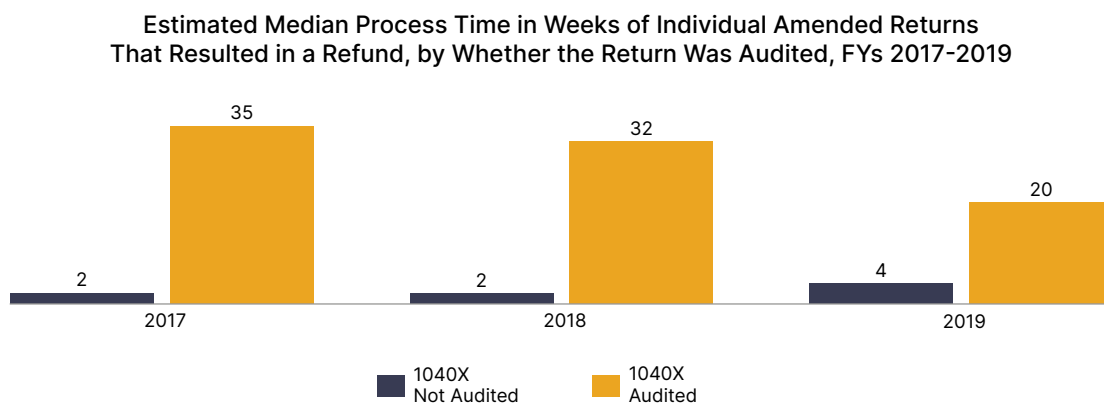
As the “Total” column in Figure 1.9.1 shows, individual taxpayers file the most amended returns; corporations file the next largest number of amended returns.<sup>14</sup> In terms of outcome, most individual taxpayers belong to Category 1 (*i.e.*, the taxpayer was issued a refund, or the overpayment was offset to a different year’s tax liability). Most business taxpayers belong to Category 4 (*i.e.*, no change). The Category 4 “no change” outcome is the second most likely outcome for individual taxpayers. Thus, this discussion focuses on the two largest groups of taxpayers — individuals and corporations — and Categories 1 and 4 outcomes.<sup>15</sup>

Estimated median processing time of amended returns varied depending on whether the IRS examined, or audited, the amended return, as discussed below.

### Examinations Add Months to Median Processing Time

As Figure 1.9.2 shows, the estimated overall median processing time for *individual* amended returns that resulted in a refund was never more than four weeks overall when the return was not audited. (Estimated median processing time for these amended returns doubled from two weeks to four weeks from FYs 2017-2019 but was well within the announced 16-week timeframe.) In FY 2017, estimated median processing time for these *audited* returns stretched up to 35 weeks; by FY 2019, it had decreased to 20 weeks, a significant improvement compared to FY 2017, but still 25 percent longer than taxpayers were told to expect.<sup>16</sup>

**FIGURE 1.9.2<sup>17</sup>**



14 Due to the COVID-19 pandemic, the IRS closed processing centers, imposed social distancing restrictions upon reopening, and prioritized the processing of current year (2019) returns; it therefore processed significantly fewer amended returns in FY 2020. For example, the IRS processed only 1,704,560 Forms 1040X and 120,573 Forms 1120X in FY 2020, a decline of 42 percent and 37 percent, respectively, compared to the 2,954,608 Forms 1040X and 190,547 Forms 1120X shown on Figure 1.9.1 as processed in FY 2019. CDW, IMF and BMF Transaction History Tables, cycle post 202039.

15 As Figure 1.9.1 shows, in FY 2019, the IRS processed 2,203,900 Forms 1040X that were in Category 1 or 4. In contrast, in FY 2020 the IRS processed only 1,424,249 of these amended returns, a decline of 35 percent. In FY 2019, the IRS processed 185,657 Forms 1120X that were in Category 1 or 4, compared to 117,296 in FY 2020, a decline of 27 percent.

16 The maximum processing time for one of these amended returns in FYs 2017-2019 was 97 weeks, *i.e.*, the taxpayer waited almost two years to receive the requested refund.

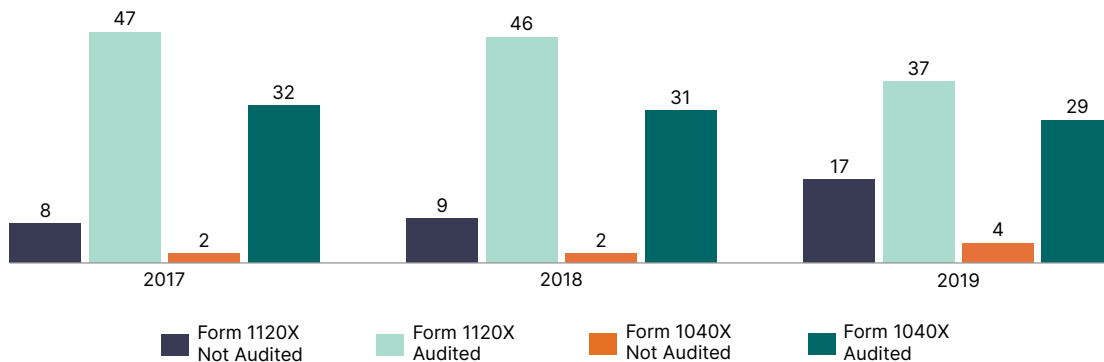
17 CDW, IMF and BMF Transaction History Tables, Individual Return Transaction File (IRTF) F1040, Business Return Transaction File (BRTF) F1120, Audit Information Management System (AIMS) Closed Case File, cycle post 202039.

For many individual taxpayers and most business taxpayers, amended returns result in no change to their tax liability. Figure 1.9.3 shows the estimated median processing times for these amended returns filed by individuals *and* by corporations according to whether the return was audited. While individuals' *unaudited* returns in this category were processed in two to four weeks, estimated median processing time for corporations' *unaudited* amended returns increased from eight to 17 weeks in FYs 2017-2019.

For *audited* individual and corporate amended returns that resulted in no change, estimated median processing time in FY 2017 was 32 weeks for individuals and 47 weeks for corporations. By FY 2019, these estimated median processing times were 29 weeks for individuals and 37 weeks for corporations.<sup>18</sup>

**FIGURE 1.9.3<sup>19</sup>**

**Estimated Median Processing Time in Weeks of Individual and Corporate Amended Returns That Resulted in No Change, by Whether the Return Was Audited, FYs 2017-2019**



Whether a taxpayer files an amended return on paper or electronically, the IRS processes it manually.<sup>20</sup> In terms of outcomes, most taxpayers belong to Category 1 or Category 4 (*i.e.*, the taxpayer either received a refund or no change resulted from the amended return). The processing steps generally followed by *audited* amended returns filed by individuals and corporations with estimated processing timeframes for Category 1 and Category 4 cases in FYs 2017-2019 are summarized in Figure 1.9.4.<sup>21</sup>

18 The maximum processing time for these amended returns in FYs 2017-2019 was 100 weeks, occurring in four individual amended return cases and four corporate amended return cases, *i.e.*, these taxpayers waited almost two years for the IRS to take action such as rejecting or declining to consider the change proposed on the amended return or disallowing a refund requested on an amended return.

19 CDW, IMF and BMF Transaction History Tables, IRTF F1040, BRTF F1120, AIMS Closed Case File, cycle post 202039.

20 IRS response to TAS information request (Oct. 6, 2020). Most amended returns were filed on paper. Electronic filing became available to individuals in 2020, which allows automation of part of the process as described below. IRS, IR-2020-182, Now available: IRS Form 1040-X Electronic Filing; Major IRS Milestone Helps Taxpayers Correct Tax Returns With Fewer Errors, Speeds Processing (Aug. 17, 2020). Business taxpayers have long been able to file amended returns electronically (and some are *required* to file electronically, see, *e.g.*, IRC § 6511(e) and Treas. Reg. § 301.6011-5(a), (d)(4) & (f), effective for taxable years ending on or after Dec. 31, 2006, obliging corporations with assets of \$10 million or more that are required to file at least 250 returns each calendar year to file original and amended income tax returns electronically), but most Forms 1120X are not filed electronically. In FYs 2017, 2018, and 2019 respectively, 15,092, 15,552, and 16,707 Forms 1120X were filed electronically. IRS response to TAS information request (Oct. 6, 2020).

21 See Appendix A following this Most Serious Problem for additional data about processing times.

**FIGURE 1.9.4, Processing Steps for Audited Amended Returns, FYs 2017-2019<sup>22</sup>**

22 CDW, IMF and BMF Transaction History Tables, IRTF F1040, BRTF F1120, AIMS Closed Case File, cycle post 202039.

## DELAYED REFUNDS CAUSE THE GOVERNMENT TO INCUR INTEREST CHARGES

The government is required to pay interest on the overpayments taxpayers claim, and the interest generally begins to accrue 45 days after the taxpayer requests a refund from the IRS.<sup>23</sup> Thus, delays in processing amended returns on which taxpayers seek refunds contribute to overpayment interest.<sup>24</sup>

### Millions of Taxpayers Call the IRS Seeking Information About Their Amended Returns

Since 2013, the IRS has provided a “Where’s My Amended Return” tool.<sup>25</sup> The tool is accessible online at IRS.gov or by calling a toll-free number for an automated phone system, referred to as the amended return hotline. The tool allows taxpayers to ascertain whether the IRS received their amended return, whether the IRS made any adjustment to their accounts, and whether processing of the amended return is complete. However, beyond these three statuses (received, adjusted, or completed), the tool does not explain where an amended return is in the processing pipeline or estimate when processing will be complete.<sup>26</sup> Moreover, the application is not available for business taxpayers or for taxpayers who file an amended return with a foreign address, among others.<sup>27</sup> In FY 2019, taxpayers accessed the tool online through IRS.gov more than five million times and called the amended return hotline more than 2.2 million times; 1.4 million of these calls were answered.<sup>28</sup>

### Taxpayers Seek Assistance From TAS in Resolving Amended Return Issues

In each of FYs 2017-2019, the fourth most common reason taxpayers came to TAS was for assistance in resolving problems caused by amended return processing.<sup>29</sup> Past analysis of TAS cases with this issue showed that the underlying factor in these cases is that the processing period greatly exceeded the IRS’s announced

23 IRC § 6611(e)(1).

24 Taxpayers are required to make a claim of refund from the IRS before they bring a refund suit. IRC § 7422(a). If the IRS disallows the claim of refund, or if the claim goes unanswered for six months, the taxpayer may seek a tax refund by paying the tax and bringing suit in a U.S. district court or the U.S. Court of Federal Claims within two years from the disallowance. IRC § 6532(a); 28 U.S.C. § 1346(a)(1); *Flora v. United States*, 362 U.S. 145 (1960). If the IRS does not disallow the claim, the IRS’s position is that a taxpayer may file a refund suit any time after the initial six-month period provided in IRC § 6532(a). See IRS Chief Counsel Notice CC-2012-012, Period of Limitations for Refund Suits Absent Waiver or Issuance of a Notice of Claim Disallowance (June 1, 2012). See also IRM 34.5.2.2, Pre-Litigation Activity (Dec. 21, 2012), noting that “[i]f the taxpayer does not waive a notice of claim disallowance, and the Service has not issued such notice, then the taxpayer may file a refund suit at any time after six months from the filing of the administrative claim.” Thus, for example, a taxpayer whose timely administrative refund claim remains unaddressed for six months could bring a refund suit years later, and if successful would be entitled to interest on the overpayment for those intervening years.

25 IRM 21.2.1.59, Where’s My Amended Return (WMAR) (Mar. 30, 2016).

26 IRS, Form 1040X, Amended U.S. Individual Income Tax Return, Frequently Asked Questions, <https://www.irs.gov/filing/amended-return-frequently-asked-questions> (last visited Dec. 11, 2020).

27 IRM 21.2.1.59, Where’s My Amended Return (WMAR) (Mar. 30, 2016). The application is also not available with respect to claims for abatement filed on Form 843, Claim for Refund and Request for Abatement, applications and claims for carrybacks, Forms 1040 with “amended” or “correct” written or stamped on the return, or amended returns routed/received by specialized functions (e.g., Examination, Bankruptcy, Integrity Verification, etc.) outside processing operations.

28 IRS response to TAS information request (Most Serious Problem: *Online Records Access: Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration* (Oct. 2, 2020) (reporting that in FY 2019 there were 5.34 million sessions using the application); IRS, IRS.gov Usage Reports, Top Content Pages, for URL [www.irs.gov/filing/wheres-my-amended-return](http://www.irs.gov/filing/wheres-my-amended-return), Jan.-Dec. 2019; IRS, JOC, Snapshot Reports: Enterprise Snapshot (FY 2019), showing that 2,209,447 net attempts to call the amended return hotline (excluding callers who dialed this number, but should have dialed another number and including callers who dialed another number but should have dialed this number), of which 536,490 were automatically answered and 907,793 were answered by assistors. See Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information Technology and Insufficient Staffing*, *supra*, for the National Taxpayer Advocate’s recommendations for improving telephone service to taxpayers.

29 For FY 2019, there were 9,427 new TAS cases in which the PCIC was 330, IRS delays in processing amended returns. The PCIC defines the most significant policy, procedure, or issue within the IRS that generated the TAS case. IRM 13.1.16.18.1, Taxpayer Issue Code (Aug. 14, 2020). There were 7,713 such cases in FY 2017 and 8,767 such cases in FY 2018. TAMIS case receipts with PCIC 330 (amended return processing).



timeframe.<sup>30</sup> As discussed above, processing time is considerably lengthened when taxpayers' amended returns are audited. A review of TAS cases that were closed in FY 2019, discussed below, suggests that taxpayers encounter an additional difficulty: the IRS may refuse to consider their amended returns on which they request an abatement of tax.

### In Letter 916C, the IRS Declines to Consider Amended Returns Requesting Abatement of Tax

The IRS has the statutory authority to abate income taxes; it has exercised that authority and has adopted procedures for processing amended returns that request abatement.<sup>31</sup> As Figure 1.9.1 shows, the IRS abated taxes in about 100,000 cases each year in FYs 2017-2019 (Category 2 cases). Yet, in some situations the IRS refuses to consider these claims.

For some amended returns requesting an abatement of tax the IRS sends the taxpayer Letter 916C, Claim Incomplete for Processing; No Consideration.<sup>32</sup> Letter 916C is a blank template, with the IRS employee developing the content of the letter by selecting among pre-written paragraphs including Paragraph M.<sup>33</sup>

Paragraph M of Letter 916C says:

The law allows you to file a claim for a refund of taxes you have paid. However, the law doesn't allow you to file a claim to reduce the tax you owe. If you disagree with the amount of tax you owe, you can appeal our decision. To appeal our decision, you must:

- Pay the tax you owe.
- File an amended return with documentation that supports a reduction in the tax you owe.
- File your claim for refund within 3 years from the date you filed your return or 2 years from the date you paid your tax, whichever is later.<sup>34</sup>

The reference to the option to “appeal our decision” in paragraph M does not refer to the right to an administrative appeal, which is not available in tax abatement cases, but rather to the right to pay the assessed tax, request a refund from the IRS (which may include an administrative appeal), and if unsuccessful, bring a refund suit in a U.S. district court or the U.S. Court of Federal Claims.<sup>35</sup> While taxpayers are required to pay the assessed tax before they may bring a refund suit in federal court, there is no requirement that they pay an assessed tax before they seek abatement of some or all of the tax from the IRS.<sup>36</sup>

30 TAS Report: The PCIC 330 Amended Return Study (Sept. 25, 2007), on file with TAS.

31 IRC § 6404(a); IRM 25.6.1.10.1, Requests for Abatement (Sept. 20, 2016); IRM 25.6.1.10.1.1(3), Abatement Authority (Nov. 18, 2011). See also IRM 1.2.1.4.15, Policy Statement 3-15 (Formerly P-2-89), Reconsideration of an Unpaid Assessment (Sept. 20, 1999).

32 IRM 21.5.3.4.6.3, No Consideration Procedures (July 21, 2020), noting that **Letter must advise the taxpayer why the claim is not being considered.** (Emphasis in original.)

33 IRM 21.5.3.4.6 (2), No Consideration and Disallowance of Claims and Amended Returns (Oct. 1, 2020).

34 Letter 916C was revised in 2020 and the quoted text is now found in Paragraph N. IRM 21.5.3.4.6, No Consideration and Disallowance of Claims and Amended Returns (Oct. 1, 2020) has been updated to replace the reference to Paragraph M with a reference to Paragraph N. All the Letters 916C in the TAS cases that contained Paragraph M were issued when the content of Paragraph M was as quoted above.

35 If the amended return claimed a refund instead of an abatement of tax, and the IRS decides to disallow the claim, it issues Letter 105C, Claim Disallowed or Letter 106C, Claim Partially Disallowed. IRM 21.5.3.4.6 (2), No Consideration and Disallowance of Claims and Amended Returns (Oct. 1, 2020); IRM 21.5.3.4.6.1, Disallowance and Partial Disallowance Procedures (Oct. 1, 2020). A taxpayer may request an administrative appeal of the disallowance, and if unsuccessful may bring a refund suit in a U.S. district court or the U.S. Court of Federal Claims. The two-year period for bringing a refund suit under IRC § 6532(a) is not suspended while the taxpayer seeks administrative review of the disallowance. Treas. Reg. § 301.6532-1(d).

36 As noted above, taxpayers must generally pay the assessed tax before they may bring a refund suit. *Flora v. United States*, 362 U.S. 145 (1960).



The IRS justifies including Paragraph M in Letter 916C when requests for abatement do not contain adequate explanation or documentation by affirming that:

This procedure was established to provide a courtesy to the taxpayers, to allow AM CSR's [Customer Service Representatives] to consider a claim, even though the taxpayer may not have paid the tax they owe. Instead of outright denying the claim, AM CSR's will review the claim in full and determine if it is fully processable and contains all the necessary supporting documentation.<sup>37</sup>

The IRS also notes: "[t]hat is why in IRM 21.5.3.4.6(3), we advise our CSR's not to deny claims based solely on the nonpayment of tax, rather to consider the claims if they contain all of the necessary documentation."

It appears the IRS considers requests for tax abatement, but only if the request is submitted with adequate explanation and documentation. When the request is incomplete, rather than asking taxpayers to provide the missing information, taxpayers are told that "the law doesn't allow you to file a claim to reduce the tax you owe."<sup>38</sup> This practice is unacceptable. The IRS should contact the taxpayer and provide a reasonable period of time to submit documentation in support of the request for abatement.

### Each Year, TAS's Inventory Includes Abatement Requests the IRS Did Not Consider

In FY 2019, TAS closed 9,602 cases in which the primary issue was IRS delays in processing amended returns.<sup>39</sup> Of these, there were 240 "no consideration" cases in which the taxpayer, after filing an amended income tax return, was issued Letter 916C that was viewable on IRS databases.<sup>40</sup> Even though these cases comprise a small portion (three percent) of TAS cases involving delays in processing amended returns, they demonstrate inconsistencies in the IRS's treatment of amended returns.

Of the 240 cases, in 52 cases the taxpayer sought an abatement of tax rather than a refund. In 22 of these 52 cases (42 percent), Letter 916C informed the taxpayer that the law does not allow claims for abatements. Either Paragraph M was selected (18 cases) or a fill-in paragraph contained the same information (four cases).<sup>41</sup> In all 22 cases except one, this was the only reason given for not considering the claim (*i.e.*, in only one case was the taxpayer advised that the supporting information was not complete).

## CONCLUSION AND RECOMMENDATIONS

Most amended returns filed by individuals result in a refund, and the IRS usually processes these amended returns within its announced timeframe of 16 weeks, although auditing these returns increased processing time to a median of 20 weeks in FY 2019. Amended returns filed by individuals and corporations often do

<sup>37</sup> IRS response to TAS information request (Oct. 6, 2020).

<sup>38</sup> In contrast, when agents in the field audit an amended return, the examiner is instructed that if the taxpayer fails to appear for an interview or to provide substantiation, to provide the taxpayer with the following explanation: "We are disallowing your request for abatement in full because we did not receive a response to our request for supporting information." IRM 4.10.11.3.2(6), Requests for Abatement (Sept. 4, 2020).

<sup>39</sup> TAMIS closed cases with PCIC 330 (amended return processing) FY 2019.

<sup>40</sup> TAMIS cases closed in FY 2019 where a word search of the TAMIS history contained "916C" or "no consider" or "no-consider," excluding cases in which the taxpayer filed the amended return to resolve issues that IRS fraud filters identified when processing the original return (these amended returns were not filed to adjust a tax liability or claim a refund). The amended returns were filed by individual taxpayers in 189 cases and by an estate or trust in five cases.

<sup>41</sup> In eight of the 22 cases, Exam instructed AM to select Paragraph M or include this information in the fill-in paragraph.

not result in any change in liability. When they are not audited, these amended returns are usually processed timely (within a median time of four weeks for individuals and 17 weeks for corporations in FY 2019). When these amended returns are audited, processing times increase significantly, reaching an estimated median of 29 weeks for individuals and 37 weeks for corporations in FY 2019; these taxpayers wait seven or eight months to learn, *e.g.*, that their claimed refund or request for tax abatement was denied. The main driver of increased processing times for audited amended returns is the time it takes to conduct the audit.

The IRS has the authority to abate income taxes. It has exercised that authority and adopted procedures for considering requests for tax abatement submitted on an amended return. About 100,000 amended returns result in tax abatement each year. However, a review of TAS cases shows that when the IRS refuses to consider requests for tax abatement, it frequently cites as the reason for its refusal that the law doesn't allow taxpayers to file a claim to reduce the tax they owe. That response is misleading and undermines taxpayers' *rights to be informed and to pay no more than the correct amount of tax.*

### Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate preliminarily recommends that the IRS:

1. Change its procedures by:
  - a. Revising the IRM to provide that if a request for tax abatement is incomplete, the employee should solicit the necessary documentation from the taxpayer, and if the documentation is not forthcoming or is insufficient, the employee should deny the request, explain the reason for the denial, and explain the different procedures that apply to requests for tax abatement and requests for refund;
  - b. If the IRS determines the taxpayer is not entitled to an abatement, issuing a 30-day letter providing taxpayers the right to file a protest with the Independent Office of Appeals<sup>42</sup> for abatement of tax and updating and clarifying the IRM's No Immediate Tax Consequence provisions by referencing abatement cases;
  - c. Removing any selectable paragraph in Letter 916C that states the law does not allow taxpayers to file a claim to reduce the tax they owe or appears to advise taxpayers that they cannot seek an abatement of tax without first paying the amount of tax already assessed (Paragraph N in the current version of Letter 916C); and
  - d. Revising the IRM to instruct employees not to use a fill-in paragraph in Letter 916C to state the law does not allow taxpayers to file a claim to reduce the tax they owe or to inform taxpayers they cannot seek an abatement of tax without first paying the amount of tax already assessed.
2. Identify and address the cause of lengthy examination times for amended returns.
3. Identify and address the cause of the increase in processing time for corporations' unaudited amended returns.
4. Add additional status updates to the "Where's My Amended Return" tool to allow taxpayers to see when the IRS selects their amended return for audit, when it assigns the audit to an examiner, and what an estimated completed processing time is based on the return's current status.

42 See IRM 8.1.1.3.2, No Immediate Tax Consequence Cases (Oct. 1, 2016).

## IRS COMMENTS

The IRS is committed to processing amended returns accurately and efficiently. On August 17, 2020, the IRS began receiving electronic Forms 1040X, Amended U.S. Individual Income Tax Return, which has been an important goal for the IRS and our industry partners for many years. Electronically filing a Form 1040X will reduce errors and decrease processing time. As of November 21, 2020, over 144,000 electronically filed amended returns have been accepted from 18 industry partners. Future upgrades will allow taxpayers to file an electronic amended return for the current and two prior years. And, although the IRS has been converting more complex paper amended returns into electronic Correspondence Imaging System (CIS) cases for years, we initiated a pilot process in October 2020 to convert less complex paper amended returns to CIS cases. If the pilot is successful streamlining our ability to work and resolve these cases, we plan to implement the process Servicewide.

We are making progress in reducing the Business Masterfile (BMF) amended return inventory that has increased due to the lapse in appropriations in 2019 and office closures due to COVID-19 in 2020. As of November 2020, the current BMF inventory is about 670,000 cases, down 20 percent from a peak of 840,000 cases one year prior. We anticipate BMF amended return processing will increase once new employees are trained and are focused on this inventory.

Our efforts to ensure compliance with the tax laws extend to amended returns. Before determining whether to survey or examine an assigned claim for refund, examiners thoroughly review the return to identify large, unusual, or questionable items per IRM 4.10.2.3, In-Depth Pre-Contact Analysis, and evaluate the audit potential of the entire return, and possibly, for related returns for the same or other tax years. The examination is not limited to the issues raised in the claim for refund if there are other issues that warrant further consideration (IRM 4.10.11.2.4 and 4.10.11.3.3). Therefore, the effort and time required to examine an amended return can rise to the same level as in other examinations, although current data shows the cycle time for examinations on amended returns is lower than other examinations both in Field and Campus operations (269 days in fiscal year 2020 compared to 319 days for all examinations). The length of any audit is based on the unique facts and circumstances of each case, the timeliness of taxpayer responses to IRS letters, and may be affected by the need to balance competing priorities or extenuating circumstances such as disasters. To help expedite examinations, campuses began forwarding claims and assigning cases to the field electronically in July 2020.

We are always seeking to improve how we communicate with taxpayers and will consider how the “Where’s My Amended Return” tool could be improved in this regard, taking into account cost and competing IT priorities. We will also review and consider other recommendations provided by the National Taxpayer Advocate.

Some amended returns include requests for abatement of tax owed, before the tax is paid. Currently, we consider these requests where sufficient documentation is provided. We do so as a courtesy to taxpayers, to allow the Service to consider a claim even though the taxpayer has not paid the assessed

tax that is due. We are working with the IRS Office of Chief Counsel to determine how best to address the concerns raised by the Advocate with our procedures in addressing requests for abatement that are incomplete.

## TAXPAYER ADVOCATE SERVICE COMMENTS

TAS understands that there are good reasons why amended returns may take almost as much time to audit as other returns. TAS looks forward to the improved processing times expected to result from electronic filing, electronic assignment of some cases that are assigned for exam, and scanning some paper returns so they are accessible in the CIS database. In any event, taxpayers should be given more realistic estimates of what the expected processing time will be; the IRM should be adjusted if the current 16 week expected processing time is no longer accurate, and the Where's My Amended Return tool should be improved accordingly. The Form 1120X instructions should likewise be adjusted if the referenced processing time of three to four weeks is not accurate.

However, the IRS's explanation for lengthy processing times for amended returns filed by businesses is not supported by the data in this report, which is based on operations for FYs 2017-2019. There was indeed a government shutdown due to a lapse of appropriations in FY 2019, as the IRS notes, but amended return processing times improved in FY 2019 compared to FYs 2017 and 2018. The COVID-19 pandemic affected IRS operations, but not until FY 2020.

The National Taxpayer Advocate appreciates the IRS's willingness to work with the IRS Office of Chief Counsel to better address requests for abatement. As with any other taxpayer request, the IRS should advise taxpayers when they need to submit additional information in order for their request to be considered. The blanket statement currently in use (that the law doesn't allow taxpayers to file a claim to reduce the tax owed) without further explanation is not appropriate and often confusing for taxpayers. Providing the taxpayer an administrative review or initiating a specific request for documentation prior to rejection should be standard procedures. The IRS should also consider permitting these taxpayers to appeal their cases to the Independent Office of Appeals rather than having to pay the tax the taxpayer believes is not due, then file another claim of refund, or bring a refund suit in order for the IRS to review their documentation. Taxpayers have the *right to pay no more than the correct amount of tax*, and the IRS should assist them with that determination.

## RECOMMENDATIONS

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Revise the IRM to provide that if a request for tax abatement is incomplete, the employee should solicit the necessary documentation from the taxpayer, and if the documentation is not forthcoming or is insufficient, the employee should deny the request, explain the reason for the denial, and explain the different procedures that apply to requests for tax abatement and requests for refund.
2. If the IRS determines the taxpayer is not entitled to an abatement, issue a 30-day letter providing taxpayers the right to file a protest with the Independent Office of Appeals<sup>43</sup> for abatement of tax and updating and clarifying the IRM's No Immediate Tax Consequence provisions by referencing abatement cases.
3. Remove any selectable paragraph in Letter 916C that states the law does not allow taxpayers to file a claim to reduce the tax they owe or appears to advise taxpayers that they cannot seek an abatement of tax without first paying the amount of tax already assessed (Paragraph N in the current version of Letter 916C).
4. Revise the IRM to instruct employees not to use a fill-in paragraph in Letter 916C to state the law does not allow taxpayers to file a claim to reduce the tax they owe or to inform taxpayers they cannot seek an abatement of tax without first paying the amount of tax already assessed.
5. Identify and address the cause of lengthy examination times for amended returns.
6. Identify and address the cause of the increase in processing time for corporations' unaudited amended returns.
7. Add additional status updates to the "Where's My Amended Return" tool to allow taxpayers to see when the IRS selects their amended return for audit, when it assigns the audit to an examiner, and what an estimated completed processing time is based on the return's current status.
8. Revise the IRM and Form 1120X instructions to more accurately reflect the expected processing time for amended returns.

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43 See IRM 8.1.1.3.2, No Immediate Tax Consequence Cases (Oct. 1, 2016).

## Appendix A

### METHODOLOGY

Traditional amended return data found on IRS databases includes items such as IRS received dates, transaction codes, action codes, and transaction dates. For example, we identified individual amended returns by searching taxpayer accounts for a transaction code of 971 and an action code of 120. The data in this report was gathered according to the following methodology:

1. Only one amended return per taxpayer per fiscal year was taken into account. If a taxpayer filed more than one amended return in the same fiscal year, whether or not it was with respect to the same tax year, only the earliest amended return was included, and processing times were computed with respect to that amended return. If a taxpayer filed more than one amended return with respect to the same tax year, the amended returns were all included in the analysis to the extent they were filed in different fiscal years.
2. Also not included in the analysis are individual amended returns that were filed after an audit was opened and amended returns that were filed with a function other than Submission Processing (*e.g.*, IRS Appeals, IRS Exam, Automated Underreporter Unit).
3. The analysis of individual amended returns is limited to individual amended returns filed on Form 1040X, although the IRS also processes as amended returns some filings taxpayers submit on another IRS form, such as Form 1040, U.S. Individual Income Tax Return, that indicate the filing is intended to be an amended return.
4. Other Business Master File returns not included in Figure 1.9.1 include, *e.g.*, employment tax, estate tax, gift tax, excise tax, and tax-exempt organization returns.

### Processing Times of Audited Amended Returns in Categories 1 or 4

**Step 1: SP routes amended returns to AM:** In FYs 2017-2019, SP received 2,152,508; 2,383,472; and 1,998,609 Category 1 and 4 Forms 1040X, respectively. SP routed 909,464 (42 percent); 929,902 (39 percent); and 791,716 (40 percent) of these returns to AM in FYs 2017-2019, respectively.<sup>44</sup> This step took an estimated median of two weeks, three weeks, and four weeks in FYs 2017-2019, respectively. In addition, SP routed 183,817; 184,605; and 194,508 Forms 1120X in Categories 1 and 4 to AM in FYs 2017-2019, respectively.

**Step 2: AM refers CAT-A returns to Exam, and Exam selects some of them for audit:** This process, which affected a small portion of amended returns, took an estimated median of five to six weeks for individual amended returns, and less than a week for corporate amended returns, as shown in Figure 1.9.A1.

<sup>44</sup> IRS CDW, IMF Transaction History File (Oct. 2, 2020). In contrast, in FY 2020, the *total* number of Forms 1040X that SP closed (*i.e.*, the number disposed of in SP or routed to another function) for all categories of outcomes was only 792,918. IRS, JOC, Customer Account Services Form 1040X Consolidated Inventory Report, Submission Processing (Sept. 26, 2020).

**FIGURE 1.9.A1, Estimated Number of Amended Returns in Categories 1 and 4 Referred From AM to Exam and Selected for Audit, and Processing Time<sup>45</sup>**

Fiscal Year	1040X Returns Referred to Exam by AM and Selected for Audit	1040X Returns Transferred From SP to AM That Were Referred to Exam and Selected for Audit	Median Number of Weeks	1120X Returns Referred to Exam by AM and Selected for Audit	1120X Returns Received by AM That Were Referred to Exam and Selected for Audit	Median Number of Weeks
FY 2017	30,405	3.3%	6	2,410	1.3%	0
FY 2018	26,571	2.9%	5	2,218	1.2%	0
FY 2019	24,007	3.0%	6	2,488	1.3%	0

**Step 3: Some amended returns that were selected for audit are assigned to an examiner, who contacts the taxpayer and opens an audit:** This process, which affected only a portion of the amended returns that were selected for audit, took an estimated three to eight weeks for individual amended returns and 14 to 16 weeks for corporate amended returns, as shown in Figure 1.9.A2.<sup>46</sup>

**FIGURE 1.9.A2, Estimated Number of Amended Returns in Categories 1 and 4 Selected for Audit That Were Assigned and an Audit Opened, and Processing Times<sup>47</sup>**

Fiscal Year	1040X Returns for Which an Audit Was Opened	1040X Returns Selected for Audit That Were Audited	Median Number of Weeks	1120X Returns for Which an Audit Was Opened	1120X Returns Selected for Audit That Were Audited	Median Number of Weeks
FY 2017	16,910	56%	4	1,059	44%	16
FY 2018	12,735	48%	9	583	26%	16
FY 2019	6,440	27%	3	211	8.5%	14

**Step 4: The examiner concludes the audit and closes the case:** This process took an estimated median of 16 to 21 weeks for individual amended returns, and 30 to 40 weeks for corporate amended returns, as shown in Figure 1.9.A3.

<sup>45</sup> CDW, IMF and BMF Transaction History Tables, IRTF F1040, BRTF F1120, AIMS Closed Case File, cycle post 202039.

<sup>46</sup> As Figure 1.9.A2 shows, a significant portion of amended returns selected for audit and assigned to an examiner are not actually audited. If the examiner concludes that an examination is not warranted, the examiner will "survey" the return instead. See IRM 4.10.2.5.1, Conditions Allowing Survey of Returns After Assignment (Sept. 9, 2019), providing that a "return will be surveyed after assignment if, after conducting the initial return screening, in-depth pre-contact analysis, and/or evaluating the audit potential the following conditions are met: a. The taxpayer (or representative) has not been contacted, b. Taxpayer records have not been inspected, and c. The examiner determined an examination will most likely not result in a material change in the taxpayer's tax liability."

<sup>47</sup> CDW, IMF and BMF Transaction History Tables, IRTF F1040, BRTF F1120, AIMS Closed Case File, cycle post 202039.



**FIGURE 1.9.A3, Estimated Number of Amended Returns in Categories 1 and 4 for Which an Open Audit Was Concluded, and Processing Times<sup>48</sup>**

Fiscal Year	1040X Returns for Which an Audit Was Begun and Completed	Median Number of Weeks	1120X Returns for Which an Audit Was Begun and Completed	Median Number of Weeks
FY 2017	16,760	21	973	41
FY 2018	12,606	18	541	39
FY 2019	6,328	16	200	35

48 CDW, IMF and BMF Transaction History Tables, IRTF F1040, BRTF F1120, AIMS Closed Case File, cycle post 202039.